

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	
HISPANIC INFORMATION AND	)	File Nos. BPLIF-19950215DS
TELECOMMUNICATIONS NETWORK, INC.	)	BPLIF-19950316DG
	)	
For Authority to Construct New Educational	)	
Broadband Service Stations on the B Group	)	
Channels and D Group Channels, Luquillo, Puerto	)	
Rico	)	
	)	

**ORDER ON RECONSIDERATION**

**Adopted: June 20, 2005**

**Released: June 22, 2005**

By the Commission:

**I. INTRODUCTION**

1. We have before us a petition for reconsideration filed by the Hispanic Information and Telecommunications Network, Inc. (HITN) on November 22, 2004.<sup>1</sup> HITN seeks reconsideration of a *Memorandum Opinion and Order*<sup>2</sup> affirming dismissal of the above-captioned applications for authority to construct new Educational Broadband Service (EBS)<sup>3</sup> stations to operate on the B Group channels and D Group channels at Luquillo, Puerto Rico.<sup>4</sup> For the reasons discussed below, we dismiss HITN's Petition.

**II. BACKGROUND**

2. The full background of this proceeding is contained in the *Commission MO&O* and will not be repeated here. On February 15, 1995 and March 16, 1995, HITN filed the above-captioned applications. On March 12, 2002, the applications were dismissed.<sup>5</sup> On February 20, 2004, the

<sup>1</sup> Petition for Reconsideration (filed Nov. 22, 2004) (Petition).

<sup>2</sup> Hispanic Information and Telecommunications Network, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 21450 (2004) (*Commission MO&O*).

<sup>3</sup> On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O & FNPRM*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Because the new rules are now in effect, we will refer to these services by their new names.

<sup>4</sup> See File Nos. BPLIF-19950215DS, BPLIF-19950316DG.

<sup>5</sup> See Letters from Clay C. Pendarvis, Acting Chief, Distribution Services Branch, Video Service Division, Mass Media Bureau, Federal Communications Commission to HITN, c/o Rudolph J. Geist, Esq. (Mar. 12, 2002)

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Broadband Division (Division) of the Wireless Telecommunications Bureau denied HITN's petitions for reconsideration of the dismissal of those applications in separate orders.<sup>6</sup> On October 22, 2004, the Commission denied HITN's application for review of the *B Group Order* and *D Group Order*.<sup>7</sup> The Commission affirmed the Division's conclusion that former Section 74.932 of the Commission's Rules required that HITN be able to provide a useable signal to its proposed receive sites<sup>8</sup> and that the test for determining whether a useable signal could be provided was whether the desired-to-undesired (D/U) signal ratio was less than 45 dB.<sup>9</sup> The Commission then rejected HITN's argument that it would meet the 45 dB D/U ratio at the Robinson School receive site because that argument was based upon erroneous calculations.<sup>10</sup> Finally, the Commission rejected HITN's arguments that receive sites could consent to interference from other stations<sup>11</sup> and that the rulings below prevented the introduction of new and valuable services to the public.<sup>12</sup> HITN filed the instant Petition on November 22, 2004.

### III. DISCUSSION

3. Section 1.106(b)(2) of the Commission's Rules<sup>13</sup> provides:

Where the Commission has denied an application for review, a petition for reconsideration will be entertained only if one or more of the following circumstances are present:

- (i) The petition relies on facts which relates to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or
- (ii) The petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity.

HITN has failed to make the required showing necessary for the Commission to examine its Petition.

4. HITN's Petition presents a declaration from a consulting engineer attempting to demonstrate that it could meet the 45 dB D/U ratio at the Robinson School site. We decline to consider this statement because it could have provided this statement earlier.<sup>14</sup> HITN had every opportunity to

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(Dismissal Letters). Public notice of the dismissals was given on March 18, 2002. See MMB ITFS Report No. 695, *Public Notice* (rel. Mar. 18, 2002).

<sup>6</sup> See Hispanic Information and Telecommunications Network, Inc., *Order on Reconsideration*, 19 FCC Rcd 2829 (WTB BD 2004) (*B Group Order*); See Hispanic Information and Telecommunications Network, Inc., *Order on Reconsideration*, 19 FCC Rcd 2834 (WTB BD 2004) (*D Group Order*).

<sup>7</sup> *Commission MO&O*.

<sup>8</sup> *Id.*, 19 FCC Rcd at 21453 ¶¶ 10-11.

<sup>9</sup> *Id.*, 19 FCC Rcd at 21454-45 ¶¶ 12-14.

<sup>10</sup> *Id.*, 19 FCC Rcd at 21455 ¶¶ 15-16.

<sup>11</sup> *Id.*, 19 FCC Rcd at 21455 ¶¶ 17.

<sup>12</sup> *Id.*, 19 FCC Rcd at 21455-56 ¶¶ 18-19.

<sup>13</sup> 47 C.F.R. § 1.106(b)(2).

<sup>14</sup> Even if we considered the engineering statement, we would not grant reconsideration. HITN's consulting engineer raises two additional issues that might help HITN's R3 (Robinson School) receive a D/U that is better than 45 dB: (1) weakening of the undesired signal loss due to foliage, and (2) shielding of the undesired signal

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present this evidence before the staff and in the AFR. Furthermore, the Petition does not otherwise present new facts or changed circumstances. It is well established that “rehearing will not be granted merely for the purpose of debating matters on which the tribunal has once deliberated and spoken.”<sup>15</sup> We therefore dismiss the Petition.

#### IV. CONCLUSION AND ORDERING CLAUSE

5. HITN’s Petition does not comply with Section 1.106(b)(2) of the Commission’s Rules because it is based upon arguments and evidence that should have been presented earlier. We therefore dismiss the Petition.

6. Accordingly, **IT IS ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Hispanic Information and Telecommunications Network, Inc. on October 22, 2004 **IS DISMISSED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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could be shielded using a “trial and error” installation technique at time of antenna installation. The engineer’s statement is based on speculation because he fails to show that such signal loss would occur in this situation. Both assumptions for additional undesired signal losses are purely speculative. Moreover, foliage can degrade the desired signal as well as the undesired signal. Moreover, quantifying signal losses due to foliage (absent actually field strength readings) is very difficult. Finally, the “trial and error” method of installation will not necessarily shield the undesired signal.

<sup>15</sup> WWIZ, Inc., *Memorandum Opinion and Order*, 37 FCC 685, 686 ¶ 2 (1965), *aff’d sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).